



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY NORTHERN REGIONAL OFFICE

Matthew J. Strickler
Secretary of Natural Resources

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David K. Paylor
Director

Thomas A. Faha
Regional Director

STATE WATER CONTROL BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO THE TOWN OF LOVETTSVILLE FOR THE TOWN OF LOVETTSVILLE WASTEWATER TREATMENT PLANT VPDES Permit No. VA0023183

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 62.1-44.15, between the State Water Control Board and the Town of Lovettsville, regarding the Town of Lovettsville Wastewater Treatment Plant, for the purpose of resolving certain violations of the State Water Control Law and the applicable permit and regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "305(b) report" means the report required by Section 305(b) of the Clean Water Act (33 United States Code § 1315(b)), and Va. Code § 62.1-44.19:5 for providing Congress and the public an accurate and comprehensive assessment of the quality of State surface waters.

2. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
5. "Discharge" means discharge of a pollutant. 9 VAC 25-31-10
6. "Discharge of a pollutant" when used with reference to the requirements of the VPDES permit program means:
 - a. Any addition of any pollutant or combination of pollutants to surface waters from any point source; or
 - b. Any addition of any pollutant or combination of pollutants to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation.
7. "DMR" means Discharge Monitoring Report.
8. "Effluent" means wastewater – treated or untreated – that flows out of a treatment plant, sewer, or industrial outfall.
9. "Facility" or "Plant" means the Town of Lovettsville Wastewater Treatment Plant located at 39183 Irish Corner Road in Lovettsville, Virginia, which treats and discharges treated sewage and other municipal wastes, for the residents and businesses of the Town of Lovettsville.
10. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
11. "NRO" means the Northern Regional Office of DEQ, located in Woodbridge, Virginia.
12. "O&M" means operations and maintenance.
13. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the State Water Control Law.
14. "Permit" means VPDES Permit No. VA0023183 which was re-issued under the State Water Control Law and the Regulation to the Town of Lovettsville on March 1, 2019, and which expires on February 29, 2024.

15. "Pollutant" means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 USC § 2011 *et seq.*)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water... 9 VAC 25-31-10.
16. "Pollution" means such alteration of the physical, chemical, or biological properties of any state waters as will or is likely to create a nuisance or render such waters (a) harmful or detrimental or injurious to the public health, safety, or welfare or to the health of animals, fish, or aquatic life; (b) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (c) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses, provided that (i) an alteration of the physical, chemical, or biological property of state waters or a discharge or deposit of sewage, industrial wastes or other wastes to state waters by any owner which by itself is not sufficient to cause pollution but which, in combination with such alteration of or discharge or deposit to state waters by other owners, is sufficient to cause pollution; (ii) the discharge of untreated sewage by any owner into state waters; and (iii) contributing to the contravention of standards of water quality duly established by the Board, are "pollution." Va. Code § 62.1-44.3.
17. "Regulation" means the VPDES Permit Regulation, 9 VAC 25-31-10 *et seq.*
18. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code.
19. "State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands. Va. Code § 62.1-44.3.
20. "The Town" means the Town of Lovettsville, a political subdivision of the Commonwealth of Virginia. The Town of Lovettsville is a "person" within the meaning of Va. Code § 62.1-44.3.
21. "Va. Code" means the Code of Virginia (1950), as amended.
22. "VAC" means the Virginia Administrative Code.
23. "VPDES" means Virginia Pollutant Discharge Elimination System.
24. "Warning Letter" or "WL" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.

SECTION C: Findings of Fact and Conclusions of Law

1. The Town owns and operates the Plant. The Permit allows the Town to discharge treated sewage and other municipal wastes from the Plant, to an unnamed tributary of Dutchman Creek in strict compliance with the terms and conditions of the Permit.
2. The unnamed tributary of Dutchman Creek is located in the Potomac River Basin. There are two downstream water quality monitoring stations on the unnamed tributary, however neither has been sampled since 2006. Station 1aXCO000.92 is located approximately 0.02 miles downstream of Outfall 001, and station 1aXCO000.39 is located at the Route 674 bridge crossing, approximately 0.5 miles downstream of Outfall 001. Dutchman Creek is located approximately 0.9 mile downstream from the Plant. DEQ monitoring station 1aDUT000.62 is located at Route 674, approximately 2.5 miles downstream of the Plant.
3. On December 13, 2019, DEQ issued WL W2019-12-N-1002 to the Town for the late submittal of a pre-treatment industrial user survey. The industrial user survey was due on September 1, 2019, and was received by DEQ on November 4, 2019. The Town has stated that the delay resulted from a change in the Town Engineer position and related staffing roles during that period.
4. Part I.C.1 of the Permit states that within 180 days of the effective date of this permit, submit to DEQ's Northern Regional Office a survey of all Industrial Users discharging to the POTW. The information shall be submitted on the DEQ Discharger Survey Form or an equivalent form that includes the quantity and quality of the wastewater. Survey results shall include the identification of significant industrial users (SIUs) discharging into the POTW.
5. In submitting its DMRs, as required by the Permit, and as indicated by the table below, the Town reported certain exceedances of its discharge limitations contained in Part I.A. of the Permit as follows:
 - a. For the December 2019 monitoring period: monthly concentration average for Ammonia as Nitrogen and the weekly concentration maximum Ammonia as Nitrogen.
 - b. For the February 2020 monitoring period: the weekly quantity maximum for Total Suspended Solids (TSS).
 - c. For the April 2020 monitoring period: the weekly concentration maximum and monthly concentration average for Biochemical Oxygen Demand (BOD5).
 - d. For the May 2020 monitoring period: the weekly concentration maximum for BOD5.

Parameter	Monitoring Period	Reported Results	Permit Requirement
Ammonia as Nitrogen (monthly conc. avg.) mg/L	December 2019	3.1	1.6
Ammonia as Nitrogen (weekly conc.max.) mg/L	December 2019	9.8	2.2
TSS (weekly qty. max) kg/d	February 2020	38	31
BOD5 (weekly conc. max) mg/L	April 2020	22.3	22
BOD5 (monthly conc. avg.) mg/L	April 2020	15.5	15
BOD5 (weekly conc. max) mg/L	May 2020	26	22

6. On December 7, 2019, the Town reported to DEQ that on December 7, 2019, approximately 9,000 gallons of partially treated effluent, solids, were discharged into an unnamed tributary of Dutchman Creek, a State Water. In communication dated July 8, 2020, the Town noted that the event was the result of emergency maintenance work which required immediate removal of Aeration Cell 1 from service. Process wastewater was re-routed to other portions of the Plant for continued treatment before discharge from the Plant. Based on this step and due to the short period of maintenance work, the discharge of partially treated effluent was not anticipated by the operator at that time. The Town states that it believed that any temporary bypass was for essential maintenance to assure efficient operation of the Plant pursuant to Permit Section II.U1. This event was assigned Pollution Response Incident Report (IR) #293065. On December 10, 2019, a local sludge hauler contracted by the Town removed the partially treated effluent (solids) from the stream.
7. On December 20, 2019, the Plant auger unit was deactivated due to an electrical fault problem starting that day, that prevented proper cycling of the auger operation despite efforts to reset the circuit breaker. Flow was then diverted around the auger to the manual bar screen at the Plant treatment headworks and debris was then removed manually each day by the Town. Due to the holiday season, the earliest a contractor could come to inspect the auger unit was December 30, 2019. The Town Reported to DEQ that on December 25, 2019, approximately 7,500 gallons of partially treated effluent was discharged into an unnamed tributary of Dutchman Creek, a State Water. The Town determined that the discharge was caused by clogs in the return pumps for Cells 1 and 2, of which the root cause was the failure of the auger/grinder unit, despite the Town's routine daily measures to clean and clear the manual screen and the return pumps at the Plant. In communication dated July 8, 2020, the Town also noted that the on-call operator failed to respond in a timely manner to alarms beginning at 1:03a.m. on

December 25, 2019 due to the clogs and resulting low flow levels in the clarifier cells, which delay ultimately allowed the discharge of the partially treated effluent to occur. This event was assigned Pollution Response Incident Report (IR) #293234. On December 26, and 30, 2019, a local sludge hauler contracted by the Town removed the partially treated effluent (solids) from the stream. On December 30, 2019, the septic hauler also pumped down the contents of the influent chamber, the auger unit was inspected, and the auger motor was determined to be bad. A replacement motor was ordered on December 31, 2019, and was received at the Plant on Friday, January 3. On January 6, 2020, the Town had the auger motor and wiring replaced, and the auger was returned to service. In January 2021, the Town also replaced the grinder cartridge and control system.

8. As indicated on the December 2019 DMR, Dissolved Oxygen (DO) and pH were not measured on December 25, 2019, the same day as the on-call operator's delayed responses to the alarms and attempts to correct clogged and low flow conditions.
9. During a DEQ inspection of the Plant conducted on December 27, 2019, and January 3, 2020. DEQ staff made the following observations:
 - a. On December 27, 2019, sewage sludge resulting from the December 25, 2019 discharge of partially treated discharge was observed in the receiving stream from the Outfall to approximately 100 feet downstream of the bridge on Irish Corner Road. As noted above, this was cleaned up on December 26 and 30, 2019.
 - b. The grinder and auger unit situated at the head works of the Plant was not operational during both inspections conducted on December 27, 2019, and January 3, 2020, for the reasons stated above.
10. On January 2, 2021, the Town reported to DEQ that on January 1, 2021, a discharge of approximately 70,000 gallons of partially treated effluent (solids) occurred into an unnamed tributary of Dutchman Creek, a State Water. The Town determined that this event was triggered by excessive wet weather-induced inflow to the Plant caused by significant rainfall on January 1, 2021, and over the prior week. This high inflow then resulted in high flow conditions within the treatment Plant and, despite efforts by Plant personnel, corresponding loss of partially treated effluent from clarifier cells #1 and #2. On January 4 and 5, 2021, a local sludge hauler contracted by the Town removed the partially treated effluent (solids) from the stream. On January 4 and 5, 2021, the Town provided written reports of these events. This event was assigned Pollution Response Incident Report (IR) #297896.
11. On March 23, 2021, NRO issued Notice of Violation No. W2021-03-N-0009 for the January 1, 2021 unauthorized discharge from the Plant. On March 4, 2020, NRO issued Notice of Violation No. W2020-02-N-0011 to the Town for the unauthorized discharges that occurred at the Plant on December 7 and December 25, 2019, the missed DO and pH

measurements on December 25, 2019, and for issues noted during the December 27 and January 3, 2020 inspections of the Plant.

12. In the fall and winter of 2020, the Town participated in a facility wastewater treatment plant evaluation performed by DEQ's Office of Water Compliance.
13. Based on further investigation conducted by the Town of its reported Permit limit exceedances as noted above, it has provided additional information addressing the reported ammonia, TSS, and BOD exceedances and has offered the following explanations:
 - a. The reported December 2019 Ammonia exceedance was caused by a mechanical breakdown and subsequent emergency maintenance work that the Town completed December 7 and 8, 2019;
 - b. The reported February 2020 TSS exceedance was due to a wet weather-caused high-flow event on February 7, 2020; and
 - c. For the reported April and May 2020 BOD5 exceedances, the Town has determined that one of two sampler devices used to sample for BOD5 (Sampler #2) was improperly functioning, potentially leading to elevated BOD5 results for April 14 and May 26, 2020. The Town was not able to diagnose the problems with Sampler #2 until later in the Spring of 2020 due to impacts of COVID pandemic safety protocols on operations staffing and hours. The Town then began to use Sampler #1 exclusively. To prevent this sampling problem in the future, the Town replaced both Sampler #1 and #2 on January 15, 2021, with a single automated sampler system.
14. Part I.A of the Permit contains effluent limitations.
15. Va. Code § 62.1-44.5 states that: "[E]xcept in compliance with a certificate issued by the Board, it shall be unlawful for any person to discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances."
16. The Regulation, at 9 VAC 25-31-50, also states that except in compliance with a VPDES permit, or another permit issued by the Board, it is unlawful to discharge into state waters sewage, industrial wastes or other wastes.
17. Part II.F of the Permit states that "except in compliance with this permit, or another permit issued by the Board, it shall be unlawful for any person to: 1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances; or 2. Otherwise alter the physical, chemical or biological properties of such state waters and make them detrimental to the public health, or to animal or aquatic life, or to the use of such waters for domestic or industrial consumption, or for recreation, or for other uses."

18. Part II.Q of the Permit states that the permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes effective plant performance, adequate funding, adequate staffing, and adequate laboratory and process controls, including appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems which are installed by the permittee only when the operation is necessary to achieve compliance with the conditions of this permit.
19. Va. Code § 62.1-44.15(5a) states that a VPDES permit is a “certificate” under the statute.
20. The Department has issued no permits or certificates to the Town other than VPDES Permit No. VA0023183 and VAN010129.
21. The unnamed tributary of Dutchman Creek is a surface water located wholly within the Commonwealth and is a “state water” under State Water Control Law.
22. Based on the late submittal of Industrial User Survey, information contained in Discharge Monitoring Reports submitted by the Town for the December 2019, February, April, and May 2020 monitoring periods, unauthorized discharges that occurred on December 7, and December 25, 2019, and observations made by DEQ staff during inspections of the Plant conducted on December 27, 2019, and January 3, 2020, the Board concludes that The Town has violated Part I.A, I.C, II.F and II.Q of the Permit, Va. Code § 62.1-44.5, and 9 VAC 25-31-60, by discharging treated sewage and municipal wastes from the Plant while concurrently failing to comply with the conditions of the Permit, as described in paragraph C(3) through C(17) above.
23. On August 7, 2020, Department staff had a conference call with representatives of the Town to discuss the violations, including a response to the NOV submitted by the Town to DEQ on July 8, 2020.
24. In October 2020, and March 2021, the Town participated in comprehensive facility wastewater treatment plant evaluations performed by DEQ’s Office of Water Compliance (“OWC”) for purposes of compliance assistance and plant efficiency. DEQ’s report of its findings and recommendations for both evaluations were provided to the Town on May 4, 2021.
25. In order for the Town to complete its return to compliance, DEQ staff and representatives of The Town have agreed to the Schedule of Compliance, which is incorporated as Appendix A of this Order.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders the Town and the Town agrees to:

1. Perform the actions described in Appendix A of this Order; and
2. Pay a civil charge of \$ 20,702.50 in settlement of the violations cited in this Order. The civil charge shall be paid in accordance with the following schedule:

Due Date	Amount
Within 90 days of Execution of this Order	\$5,175.62 or balance
Within 180 days of Execution of this Order	\$5,175.62 or balance
Within 270 days of Execution of this Order	\$5,175.63 or balance
Within 365 days of Execution of this Order	\$5,175.63 or balance

3. If the Department fails to receive a civil charge payment pursuant to the schedule described above, the payment shall be deemed late. If any payment is late by 30 days or more, the entire remaining balance of the civil charge shall become immediately due and owing under this Order, and the Department may demand in writing full payment by the Town. Within 15 days of receipt of such letter, the Town shall pay the remaining balance of the civil charge. Any acceptance by the Department of a late payment or of any payment of less than the remaining balance shall not act as a waiver of the acceleration of the remaining balance under this Order.
4. All payments shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

5. The Town shall include its Federal Employer Identification Number (FEIN) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF). If the Department has to refer collection of moneys due under this Order to the Department of Law, the Town shall be liable for attorneys' fees of 30% of the amount outstanding.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of the Town for good cause shown by the Town or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, the Town admits to the jurisdictional allegations, and agrees not to contest, but does not admit , the findings of fact, and conclusions of law contained herein.
4. The Town consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. The Town declares it has received fair and due process under the Administrative Process Act and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by the Town to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. The Town shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. The Town shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. The Town shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:

- a. the reasons for the delay or noncompliance;
- b. the projected duration of any such delay or noncompliance;
- c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and the Town. Nevertheless, the Town agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
 - a. The Director or his designee terminates the Order after the Town has completed all of the requirements of the Order;
 - b. The Town petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
 - c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to the Town.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve the Town from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by the Town and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.

13. The undersigned representative of the Town certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind the Town to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of the Town.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, the Town voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 20th day of October, 2021.



Thomas A. Faha Northern Regional Director
Department of Environmental Quality

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The Town of Lovettsville voluntarily agrees to the issuance of this Order.

Date: Aug. 23, 2021 By: [Signature] Interim TM.
(Person) (Title)

Commonwealth of Virginia

City/County of Loudoun

The foregoing document was signed and acknowledged before me this 23rd day of August, 2021, by Samuel Finz who is Interim Town Manager of the Town of Lovettsville, on behalf of the Town.

[Signature]

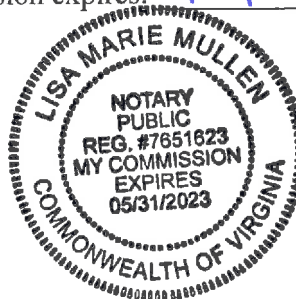
Notary Public

7651623

Registration No.

My commission expires: 5/31/23

Notary seal:



APPENDIX A SCHEDULE OF COMPLIANCE

The Town of Lovettsville shall:

1. Unpermitted Discharge/Spill

- a. Submit documentation to DEQ within 30 days of the effective date of this Order to show that the Town's Standard Operating Procedures have been amended regarding procedures and protocol to prevent and respond to unauthorized discharges, and that Plant staff have been trained for these changes, to help prevent future unauthorized discharge events at the Plant.

2. Effluent Violations

- a. Within 60 days of the effective date of this Order, the Town shall (i) evaluate and consider the finding and recommendations of DEQ's Office of Water Compliance's (OWC) May 4, 2021, report for the October 2020 and March 2021 comprehensive facility wastewater treatment plant evaluations for incorporation into Plant operations and (ii) make any associated changes to the Plant's O&M/Standard Operating Procedures. Any such changes to the O&M/Standard Operating Procedures shall be submitted to DEQ within 90 days of said changes being made.

3. DEQ Contact

Unless otherwise specified in this Order, The Town shall submit all requirements of Appendix A of this Order to:

**Attention Enforcement
VADEQ- Northern Regional Office
13901 Crown Court
Woodbridge, VA 22193**